

IFW  
PATENT

Practitioner's Docket No. 17396/09156



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Re application of: Frank C. Kohn

Examiner: Alton N. Pryor

Application No.: 10/658,923

Group No.: 1616

Filed: September 9, 2003

Confirmation No.: 2292

For: Control Of Shoot/Foliar Feeding  
Pests With Pesticide Seed Treatments

Commissioner for Patents  
P. O. Box 1450  
Alexandria, Virginia 22313-1450

**CERTIFICATE OF MAILING UNDER 37 C.F.R. § 1.8(a)**

I hereby certify that the attached correspondence, comprising of:

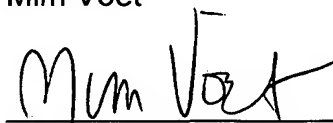
1. Response to Election Requirement with Traverse Transmittal (2 pages – original and copy)
2. Response to Election Requirement with Traverse (2 pages)
3. Return Receipt Postcard,

is being deposited with the United States Postal Service, with sufficient postage, as first class mail in an envelope addressed to:

Commissioner for Patents  
P. O. Box 1450  
Alexandria, Virginia 22313-1450

on April 21, 2006.

Mim Voet

  
\_\_\_\_\_  
Signature of person mailing paper



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RESPONSE TO ELECTION REQUIREMENT WITH TRAVERSE TRANSMITTAL

1. Transmitted herewith is a Response to Election Requirement With Traverse in response to the Office Communication mailed March 23, 2006 for this application.

STATUS

2. Applicants are other than a small entity.

**CERTIFICATION UNDER 37 C.F.R. §§ 1.8(a) and 1.10\***

*(When using Express Mail, the Express Mail label number is mandatory;  
Express Mail certification is optional.)*

I hereby certify that, on the date shown below, this correspondence is being:

**MAILING**

■ deposited with the United States Postal Service in an envelope addressed to the Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

**37 C.F.R. § 1.8(a)**

■ with sufficient postage as first class mail.

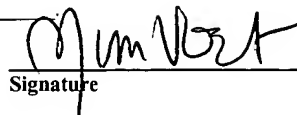
**37 C.F.R. § 1.10\***

☐ as "Express Mail Post Office to Addressee"

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**TRANSMISSION**

☐ facsimile transmitted to the Patent and Trademark Office, (703) \_\_\_\_\_ - \_\_\_\_\_

  
Signature

Date: April 21, 2006

Mim Voet

\_\_\_\_\_  
(type or print name of person certifying)

\* Only the date of filing (§ 1.6) will be the date used in a patent term adjustment calculation, although the date on any certificate of mailing or transmission under § 1.8 continues to be taken into account in determining timeliness. See § 1.703(f). Consider "Express Mail Post Office to Addressee" (§ 1.10) or facsimile transmission (§ 1.6(d)) for the reply to be accorded the earliest possible filing date for patent term adjustment calculations.

### EXTENSION OF TERM

3. The proceedings herein are for a patent application and the provisions of 37 C.F.R. 1.136 apply. Applicants believe that no extension of term is required. However, this conditional petition is being made to provide for the possibility that applicants have inadvertently overlooked the need for a petition for extension of time.

### FEE FOR CLAIMS

4. The fee for claims (37 C.F.R. 1.16(b)-(d)) has been calculated as shown below:

	(Col. 1)		(Col. 2)		(Col. 3)	OTHER THAN A SMALL ENTITY			
	CLAIMS REMAINING AFTER RESPONSE		HIGHEST NO. PREVIOUSLY PAID FOR		PRESENT EXTRA		RATE		ADDIT. FEE
TOTAL	37	—	37	=	0	x	\$ 50.00	=	\$ 0.00
INDEP.	3	—	3	=	0	x	\$ 200.00	=	\$ 0.00
FIRST PRESENTATION OF MULTIPLE DEP. CLAIM						+	\$ 0.00	=	\$ 0.00
TOTAL ADDIT. FEE								\$	0.00

No additional fee for claims is required.

### FEE DEFICIENCY

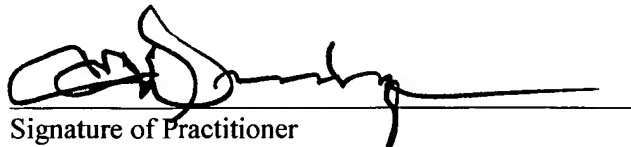
5. If a fee for claims is required, charge Deposit Account No. 50-2548.  
If a fee for an extension of time is required, charge Deposit Account No. 50-2548.

A duplicate copy of this paper is enclosed.

Date: April 21, 2006

Reg. No.: 35,124

Telephone No.: 864-250-2238  
Facsimile No.: 803-255-9831  
Customer No.: 45850

  
Signature of Practitioner  
Charles E. Dunlap, Ph.D., Esq.

Nelson Mullins Riley & Scarborough, LLP  
1320 Main Street, 17<sup>th</sup> Floor  
Columbia, SC 29201



ATTORNEY DOCKET NO: 17396/9156

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In Re Application of: Frank C. Kohn	)	Examiner: Alton N. Pryor
	)	
Serial No: 10,658,923	)	Art Unit: 1616
	)	
Filed: September 9, 2003	)	Confirmation No.: 2292
	)	
Title: Control of Shoot/Foliar Feeding Pests	)	Deposit Account: 50-2548
with Pesticide Seed Treatments	)	

RESPONSE TO ELECTION REQUIREMENT WITH TRAVERSE

Commissioner for Patents  
P. O. Box 1450  
Alexandria, Virginia 22313-1450

Dear Sir:

This is filed in response to the Office Action dated March 23, 2006, and is being deposited as First Class Mail. The response is believed to be timely with respect to the 30-day shortened statutory period for response that was set in the Action.

With respect to the requirement for the election of species under 35 USC §121, the Applicant provisionally elects permethrin as the species of pyrethrin or synthetic pyrethroid for initial search and examination. The claims that are readable on this species include: claims 1 – 3, 6 – 12, 15, 16, 18 – 20 and 22 – 37.

The Action appears to require the election of a species for “an additional pesticide”, which is mentioned in claims 1 and 6. With respect, the Applicant traverses the requirement that an election be made of “an additional pesticide”, because that is not an element of the claims. Rather, the feature that is required in the claims is “if the seed is treated with a pesticide in addition to the pyrethrin ... , the additional pesticide is added as a part of the composition along with the pyrethrin ...”. In fact, no particular “additional pesticide” is ever identified in the specification or the claims and, therefore the Applicant cannot specify such an element. In fact, any “pesticide” can fulfill this feature.

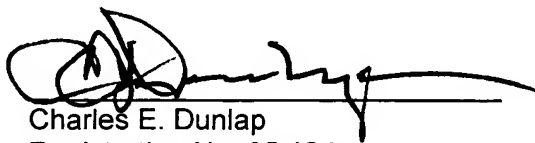
The Applicant maintains that specification of permethrin as the pyrethrin or synthetic pyrethroid fulfills the requirements for the election of species, and respectfully requests that search, examination, and allowance of the claims proceed on that basis.

Respectfully requested,

NELSON MULLINS RILEY & SCARBOROUGH

April 21, 2006

Date

A handwritten signature in black ink, appearing to read 'Charles E. Dunlap', written over a horizontal line.

Charles E. Dunlap

Registration No. 35,124

1320 Main Street, 17<sup>th</sup> Floor

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